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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/072,149      | 02/06/2002  | Mark W. Kimberlin    | D-2978              | 1374             |

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EXAMINER

SALDANO, LISA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3673

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,149

Applicant(s)

KIMBERLIN ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9-11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lancaster (5,849,645).

Regarding claim 1, Lancaster discloses an erosion control system 10 comprising a flexible matting adapted to be placed on a sloped, substantially unvegetated surface wherein the matting includes an upper layer 50, a lower surface 30 and a core layer including a fiber matrix 20 and a cuspated netting 40. The upper layer 50 is bonded to the core layer wherein the core and upper layers define a substantially flat upper surface (see Fig. 4).

Regarding claim 9, Lancaster discloses the erosion control system as described above wherein the fiber matrix comprises a material selected from the group consisting of coconut fibers, flax fibers, polypropylene fibers and combinations thereof (see column 2, lines 31-35).

Regarding claims 10 and 11, Lancaster discloses the erosion control system as described above wherein the upper layer 50 comprises a geogrid (see Figs. 5A, 5B and column 4, line 64 through column 5, line 4).

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Regarding claim 12, Lancaster discloses the erosion control system as described above wherein the biaxial geogrid is stitch bonded with the core layer (see column 5, lines 23-28).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lancaster as applied to claim 1 above.

Regarding claims 2-8, Lancaster discloses the erosion control system as described above, which comprises a flexible matting. However, Lancaster fails to explicitly disclose the density of the matting, the roughness of the upper surface of the matting, a range of velocities for liquid flow on the matting and a range of durations for liquid flow exposure. It would be obvious to one of ordinary skill in the art to have developed the features claimed by the applicant from Lancaster's inventions because although Lancaster does not explicitly disclose these matting characteristics, they are in the range of characteristics for the inventions disclosed by Lancaster. For example, Lancaster discloses that the flexible matting may comprise various core materials, i.e. coconut fibers and recycled fibers. These, as well as other fibers, would have varying

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densities that also provide a range of densities for the overall flexible matting itself. Therefore, it is possible to use the materials disclosed by Lancaster in his invention to achieve the range of densities claimed by the applicant. Furthermore, the characteristics disclosed by Lancaster may also be used to achieve the roughness, and velocity and exposure durations claimed by the applicant.

5. Claims 14-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lancaster (5,849,645) in view of the Granite Seed Company 1999-01-28, (on-line) retrieved from the Internet Archive Database using internet:

URL:<http://web.archive.org/web/19990128060024/www.graniteseed.com/erosion/index.html>.

Lancaster discloses an erosion control system 10 comprising a flexible matting adapted to be placed on a sloped, substantially unvegetated surface wherein the matting includes an upper surface netting 50, a lower surface 30 and a core layer including a fiber matrix 20 and cusped netting 40. The upper layer 50 is bonded to the core layer wherein the core and upper layers define a substantially flat upper surface (see Fig. 4). Also, the upper layer 50 comprises a geogrid (see Figs. 5A, 5B and column 4, line 64 through column 5, line 4). Lancaster also discloses that the erosion control system comprises a fiber matrix that may include a material selected from the group consisting of coconut fibers, flax fibers, polypropylene fibers and combinations thereof (see column 2, lines 31-35), but may include any commercially available fibers.

However, Lancaster fails to explicitly disclose that one of the commercially available fibers for use with the mat includes sudan grass or rice straw.

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The Granite Seed Company discloses erosion control blankets or mats titled "Greenfix America" comprising synthetic or organic netting with cores comprising either sudan grass or rice straw.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lancaster's mat to use sudan grass or rice straw as the commercially available fiber because, as taught by the Granite Seed Company, because The Granite Seed Company clearly states that the sudan grass or rice straw is formed into mats or blankets and thereby structured to be placed on an unvegetated surface to provide erosion control for areas subject to wind and water.

### *Response to Arguments*

6. In response to applicant's argument on page 4, paragraph 1 through page 5, paragraph 2 of the amendment filed on February 24, 2003, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are clearly shown in Lancaster 5,849,645. Lancaster discloses an intermediate cusped netting and fiber matrix that is sandwiched between a top and bottom netting. The cusped netting of Lancaster does not define the upper surface of the composite matting, as argued by the applicant. However, the top netting 50 as shown in figures 5A and 5B does define the upper surface of the composite matting and constitutes a substantially planar surface without substantial three-dimensional features. This is based on the applicant's definition of a "flat upper surface" as defined in the applicant's

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disclosure wherein "A flat upper surface is...defined...as a surface being without ...cuspatations, pockets, ridges or the like (page 4, lines 10-20).

7. Applicant's arguments with respect to claims 14-18 have been considered but are moot in view of the new ground(s) of rejection as necessitated by the applicant's amendment.

8. Applicant's arguments with respect to claims 19-22 have been considered but are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Regarding the applicant's argument that rice straw fibers have been considered waste and that it would not have been obvious to substitute rice straw fibers in the mat, a reference from the Granite Seed Company 1999-01-28, (on-line) retrieved from the Internet Archive Database using internet:

URL:<http://web.archive.org/web/19990128060024/www.graniteseed.com/erosion/index.html>.

has been provided that clearly discloses the use of rice straw in an erosion control mat placed on a substantially unvegetated surface.

*Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



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lms

March 31, 2003



**HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600**